

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

MFA.No. 1132 of 2001

AGAINST MVOP.1490/1996 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THRISSUR
.....

APPELLANTS/PETITIONERS 1 TO 3:

1. SARAMMA YOHANNAN, W/O.LATE YONAHHAN,
EDAPPARA HOUSE, KANNARA PO,
ALPARA, THRISSUR DIST.

2. MINOR ELVINA JOHN, AGED 12 YEARS,
D/O.LATE YOHANNAN, DO.

3. MINOR JESLINE JOHN, AGED 10 YEARS,
D/O.LATE YOHANNAN, DO.

(APPELLANTS 2 AND 3 MINORS ARE REPRESENTED BY THEIR
MOTHER AND GUARDIAN APPELLANT NO.1 ABOVE)

(PETITIONERS 5 TO 12 IN THE LOWER TRIBUNAL ARE NOT MADE
PARTIES HEREIN SINCE THEY ARE UNNECESSARY)

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS:

1. S.SUNDARARAJU, S/O.SELLAPPA REDDIAR, 105,
EVR NAGAR, T.V.KOIL,
THIRUCHIRAPPILLY, T.NADU.

2. T.MUTHAIYAH, S/O.THANGAVELU,
KAMARAJ NAGAR, IIND STREET, CHENNAI-9.

3. UNITED INDIA INSURANCE CO. LTD.
BRANCH THRISSUR.

R3 BY ADV. SRI.M.S.PATTALI
SRI.T.VINOD KUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.1132 OF 2001

Dated this the 17th day of December, 2007

JUDGMENT

Koshy, J.

A registered Seaman sustained fatal injury in a motor accident. When he was driving his own car, a lorry, driven by the second respondent, hit the car. The lorry was insured by the third respondent Insurance Company. The Tribunal found that the accident occurred due to the negligence of the driver of the lorry. However, the Tribunal found 10% contributory negligence on the part of the deceased. Even though contributory negligence of 10% as found by the Tribunal was questioned, considering the evidence adduced, we agree with the Tribunal and no interference is required in the finding of 10% negligence on the part of the deceased. The dependents of the deceased claimed Rs.35,00,000/- as compensation. The deceased was 44 years at the time of accident. The Tribunal has awarded only Rs.3,60,000/-, after calculating a compensation of Rs.4,00,000/-.

2. The deceased was a registered Seaman. Exhibit A8 is the trade certificate issued by the Government of India and Exhibits A7

and A9 to A15 show that he was regularly and continuously employed as Seaman in various foreign Shipping Companies and earning a good amount from 1974 onwards. Therefore, on the date of accident (26.10.1996) he had more than 20 years of experience. Exhibit A17 is the valuation statement of house construction which shows that he constructed a house building worth Rs.10,00,000/- out of his income. Exhibits A15 minimum wage agreement was also produced wherein it can be seen that basic minimum wages payable to a Seaman was US\$ 510. That means, more than Rs.18,000/- per month during that time. That is apart from all allowances. As per the present contract, which was commenced from 10.1.1996, the total remuneration was US \$ 1047.40 out of which, US \$ 470 was the basic and US \$ 367 was the guaranteed overtime wages. It is also stated that apart from the above, they are entitled to food and accommodation during duty. If the above certificate is taken into account, his monthly remuneration will come to Rs.50,000/-, considering the exchange rate existing at the time of accident. It is true that every year the contract was being renewed by the foreign employer. Even though he can work up to 60 years, the contract will be renewed, depending upon his health. Certificates show that his employment was continuous. The Tribunal has fixed only Rs.3,000/-

as the monthly income, which is, in our opinion, very low. Even though the claim of the appellants is that Rs.57,000/- should be fixed as the monthly income, considering Exhibit A15 contract, which is just before his death, we are of opinion that atleast minimum wage (without allowances) of Rs.18,000/- can be fixed as monthly income and personal expenses considering the nature of employment and higher income, Rs.9,000/- can be fixed as the loss of family contribution for the purpose of calculation of compensation. Tribunal has fixed 15 as the multiplier. It was contended that he was only 44 years old and he had 16 years more service. Future prosperity shall also be considered. In view of the increase in life expectancy, reduction of interest rate, young age of the child and widow, a higher multiplier should be taken. Considering guidance from the second schedule, we are of opinion that no enhancement of multiplier is required. If that be so, compensation for loss of dependency will be $9000 \times 12 \times 15 = \text{Rs.}16,20,000/-$. The Tribunal has awarded Rs.3,60,000/- only. So, the additional compensation payable will be Rs.12,60,000/-, out of which 10% has to be deducted for contributory negligence. Therefore, the third respondent Insurance Company will deposit Rs.11,34,000/- with 7% interest from the date of application till date of deposit, over and above the

compensation awarded by the Tribunal. On deposit of the above amount, the first appellant is allowed to withdraw one-fourth of the amount and the entire balance amount shall be deposited in a nationalised bank in the name of appellants 2 and 3 equally enabling them to withdraw the same at the time when they become 21 years or at the time of their marriage whichever is earlier. The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1132 OF 2001

JUDGMENT

17.12.2007